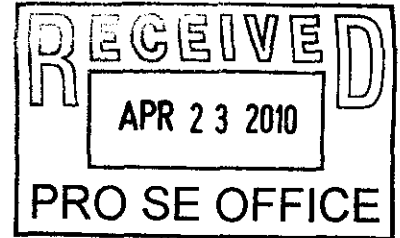


ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BIBI NAZEEMA HUSAIN

COMPLAINT



NAME OF PLAINTIFF(S)

v.

SMARTÉ CARTE, INC.

NAME OF DEFENDANT(S)

JURY TRIAL DEMANDED

MATSUMOTO, J.

CV10-1844

LEVY, M.J.

This action is brought for discrimination in employment pursuant to (check only those that apply):

_____ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) (race, color, gender, religion, national origin).

NOTE: In order to bring a suit in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.

_____ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub. L. No. 92-592, the Civil Rights Act of 1991, Pub. L. No. 102-166).

NOTE: In order to bring a suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.

_____ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117 (amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 and the Civil Rights Act of 1991, Pub. L. No. 102-166).

NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.

-1-

*

_____ Harassments, Discrimination and being accused. Getting union on board.

Jurisdiction is specifically conferred upon this United States District Court by the
aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate
under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991,
Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

128-46 150 STREET OZONE PARK
Street Address
QUEENS, NY, 11436, 718-510-1430
County State Zip Code Telephone Number

2. Defendant(s) resides at, or its business is located at:

4455 WHITE BEAR PARKWAY
Street Address
 , WHITE BEAR LAKE, MINN, 55110-7641
County City State Zip Code

3. The address at which I sought employment or was employed by the defendant(s) is:

B L D G # 14, JFK INT'L AIRPORT
Street Address
QUEENS, JAMAICA, NY, 11430
County City State Zip Code

4. The discriminatory conduct of which I complain in this action includes (check only those that apply).

☐ Failure to hire.
☒ Termination of my employment.
☐ Failure to promote.
☐ Failure to accommodate my disability.
☐ Unequal terms and conditions of my employment.
☒ Retaliation
☒ Other acts (specify): ACCUSED getting union on Board

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

5. It is my best recollection that the alleged discriminatory acts occurred on:

My first Discrimination Started on October 8th-2008 and continued Date(s) till last day i.e. 4/15/2010. Please refer my Detailed Account of events under 4 To know more in concern and will give better insight in my Case.

6. I believe that the defendant(s) (check one)

☒ is still committing these acts against me. *(Please Note that my services terminated on 4/15/2010)*
☐ is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:
(check only those that apply and state the basis for discrimination, for example, what is your religion, if religious discrimination is alleged)

☐ race _____ ☐ color _____
☐ gender/sex _____ ☐ religion _____
☐ national origin _____
☐ age _____ My date of birth is: _____
☐ disability _____ Date

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

8. The facts of my case are as follows:

1. Be Cause Constant victim after being labelled of
Getting union on Board.
2. Unfavorable Treatment as against those who
did not sign the Card to get union on board.
3. Unequal Terms and Condition in terms of leave
Lunch break time.
4. Was ~~asked~~ to do things in ~~violation~~
violation of Port Authority's Rules and
Regulation

(Attach additional sheets as necessary)

Note: As additional support for your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.

9. It is my best recollection that I filed a charge with the New York State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's

alleged discriminatory conduct on: _____
Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity

Commission regarding defendant's alleged discriminatory conduct on: 11/20/2009
Date

Only litigants alleging age discrimination must answer Question #11.

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one),

☐ 60 days or more have elapsed.

☐ less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission (check one):

☐ has not issued a Right to Sue letter.

☒ has issued a Right to Sue letter, which I
received on FEBRUARY 18, 2010
Date

NOTE: Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs, and attorney's fees.

Rita
PLAINTIFF'S SIGNATURE

Dated: 5-23-10

128-46
Address 150th Street - @ Zone park
718, 570-1430 Zip # 11436
Phone Number



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

Roxanne Zygmund
Investigator
Phone (212) 336-3764
Fax (212) 336-3790

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
TTY: (800)-669-6820
District Office: (212) 336-3630
General FAX: (212) 336-3625

Bibi N. Husain
128-46 150th Street
S. Ozone Park, NY 11436

Re: *Bibi N. Husain v. SMARTECARTE, Inc.*
EEOC Charge No: 520-2010-00683

Dear Ms. Husain:

The Equal Employment Opportunity Commission (hereinafter referred to as the "Commission"), has reviewed the above-referenced charge according to our charge prioritization procedures. These procedures, which are based on a reallocation of the Commission's staff resources, apply to all open charges in our inventory and call for us to focus our limited resources on those cases that are most likely to result in findings of violations of the laws we enforce.

In accordance with these procedures, we have evaluated your charge based upon the information and evidence you submitted. Based on this evaluation, we can not conclude that you were subjected to an adverse employment action motivated by discriminatory animus as defined by Commission guidelines and federal law.

Attached is your Dismissal and Notice of Rights. If you wish to pursue this matter further in federal court, your lawsuit must be filed within 90 days of your receipt of the Notice. Please contact John Douglass, Supervisory Investigator at (212) 336-3765 if you have any questions.

Sincerely,



For
Spencer H. Lewis, Jr.
District Director

February 16, 2010

Date

enc.

DISMISSAL AND NOTICE OF RIGHTS

To: **Bibi N. Husain**
128-46 150th Street
S Ozone Park, NY 11436

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2010-00683

Roxanne Zygmund,
Investigator

(212) 336-3764**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Spencer H. Lewis, Jr.,
Director

February 16, 2010

(Date Mailed)

Enclosures(s)

CC: **Director**
Human Resources
SMARTECARTE, INC.
4455 White Bear Parkway
White Bear Lake, MN 55110

TO WHOM SO EVER IT MAY CONCERN

I joined the company on 03/30/2007, and had no complaint for over a year and a half, till 10/30/2008. I became a constant victim of harassment and retaliation ever since 10/31/2008, and was being falsely labeled of getting the union on board. Series of false charges were put on my file without any merit, details of which are as follows:

10/30/08 A well-coordinated move was hatched with the help of Mr. Singh and Ms. Nadera Singh to falsely accuse me in the presence of Ms. Susan (AGM) of forcing staff to sign the cards. Fact of the matter is that Mr. Latchmi was the main person responsible for an attempt to get the Union on board and at the last moment became a turncoat or a double agent. And for his role he was promoted to Assistant Terminal Manager (ATM) from an Ambassador. To the best of my recollection this started from 10/31/09.

01/30/09 Mainly, due to the above incidence, this management was waiting for an opening, and I inadvertently fell for this. For this particular incidence, I had taken permission from my immediate supervisor Mr. Romeo Itwaru who should have checked my course and correctly advised me of the ramification. Not only this, others were also doing the same thing prior to this incidence and I felt that this act of receiving relatives and friends while on duty was quite normal. Even after giving my honest explanation this management under Mr. Chris Baile still decided to give me the Corrective Action Notice. After receiving this Corrective Action Notice, I felt that this company has double standard and gave the names of other staff involved in similar acts, and demanded that they should also be served with the similar Corrective Action Notices. Right now three names stand out, namely Mr. Don Pena, Mr. Andre and Mr. Jerwin. According to Mr. Chris Baile that these three gentlemen were served Corrective Action Notices. Whether this is correct or not I have no clue, only their record can prove the authenticity of Mr. Chris's words. Corrective action notice was served to me on 01/30/09, hence, I feel singled-out.

02/07/09 My pointing these irregularities turned Mr. Don Pena into a retaliatory mode, and approached me on February 07, 2009 from nowhere and gave me a small lecture as to how I should conduct myself and not idle in customs when there was virtually nothing going on in the customs. After his lecture he demanded the pouch, so that he could audit. At this I questioned him whether he was from finance. His response was, "No". I replied, "You have to call my immediate supervisor who could check in your presence. He called the supervisor (Mr. Latchmi) who audited the pouch in Don's presence and signed the Ambassador's Sheet. Let me re-emphasize that this particular Ambassador Sheet was signed by Mr. Latchmi and not by Mr. Don Pena. Please note, prior to this incidence

only Finance staff or immediate supervisor could audit the pouch, hence I was following the directives given to me.

After this incidence, I was called into Mr. Chris Baile's office, who said, "You (Bibi) have refused a direct order, hence I (Chris) am giving you this corrective action notice. I refused to sign on the ground that Mr. Don never audited me before. As per instructions given to us, only Finance or immediate supervisor could audit. Hence, I was very much with-in my rights to have refused him.

Immediately Mr. Chris Baile showed me four photo- copies of Ambassador sheet duly signed by Mr. Don Pena, claiming to have audited me in the past prior to this incidence. It is my firm conviction and claim that Mr. Don Pena never audited me to this date; hence all these documents are forged. Therefore, based on my conviction, I requested for the Original Ambassador Sheet from this management under Mr. Chris to have been audited and **signed by no one else** but Mr. Don Pena. I must mention that I have not received original copy duly signed by me till date. Details of those dates for Original Ambassador Sheets are given below:

10/10/2008, 09/05/08, 01/13/09 and last one without any date.

02/15/09 On or about Sunday, **February 15, 2008**; I was informed by Mr. Latchmi that they (management) were investigating my break time. He sent me on my break at 6:35 p.m. and I came back after my regular break time. At 10:30 p.m. that night, Mr. Latchmi approached me and asked me to give him the pouch. I simply wrote down the time he had approached me on the Ambassador sheet. When he saw the time on the ambassador sheet he started yelling at me and questioned me, as to why I wrote the time. I replied that I have to protect my interest in light of my experiences with the management; they don't pay any credence to my side of the statement, hence I have to protect my interest. I clearly feel this to be a form of mental torture, verbal abuse and denigration in the presence of outsiders.

02/20/09 Five days later, on or about **Friday 20, 2009**, Latchmi came to me in customs at around 4:20 p.m. with my coworker, Fizen Khan when I was taking care of the international passengers in need of our carts. Latchmi said that I had to secure the carts and show him (Mr. F Khan) how to tie the ropes. They went to another set of units to do what they normally do, fill the units with carts. **(Please note that the staff before being hired is given training in all aspect of the operations, and for him to tell me to show Mr. Fizen Khan how to tie the carts was unwarranted, as he already knew how to tie the carts.)** I had made a mental note of his instruction and was waiting to wind-up my current job on hand that is to help passengers get the change (balance money) and the carts. It is a regular practice to attend to the clients (passengers) first and later assist staff bringing the carts inside customs in tie-ing (tying) the loose carts at the end of the units. While I was still busy with the passengers, Mr. Latchmi comes back to me and asked me if I (Bibi) heard what he (Latchmi) had said. Before I could respond, he just walked away. After I was done with the clients, I joined with Mr. Fizen Khan and showed him

how to tie the carts only to follow Mr. Latchmi's instruction. Later, knowing very well that he (Khan) knew how to tie the carts, I jokingly said to Khan, "Big guy like you don't know how to tie a rope?" He (Khan) laughed. After an hour he (Mr. Latchmi) comes to me and said, "Bibi, give me the pouch and go home." I asked, "Why?" He said, "Because you (Bibi) earlier refused my (Latchmi) order and walked away. I did not refuse his order. At this I asked him, "Who told you to send me home." He responded, "I am telling you to go home." Since, I was in the middle of the transaction with the passenger, and after finishing the transaction with a lady passenger, gave him the pouch. He said, "Oh! Are you threatening me?" As luck would have it, this lady passenger was still standing there who had listened to the entire conversation, I asked her, "Ma'am, did I threaten this guy, pointing towards Latchmi? She shook her shoulder in dismay, and laughed in a sarcastic way nodding her head side ways. At this Latchmi asked me, "What the passenger had to do with it." I said, "She was here, hence I approached her to authenticate my claim. This was too much for him to bear and in consultation with Mr. Romeo Itwaru; I was sent home at 5:30 p.m. and further instructed me to go to the office on Monday. I was suspended for three days without pay till February 23, 2009, and no letter of suspension was ever served to me to this effect.

02/23/09 On Monday, February 23, 2009, when I reported to Mr. Chris Baile's office with Mr. Latchmi present. Mr. Baile read the complaint that Mr. Latchmi, concocted (made-up) against me. He said that my co-worker David Paul had witnessed me threaten Latchmi. I responded that I did not threaten Latchmi, and this alleged coworker was not even present at the time of this incidence, and explained the whole nine (09) yards. He (Chris Baile) responded, OK, Bibi, you refused an order, and you walked away." He gave me a written warning, and further added that if a manager approached you (Bibi), I am to leave the passenger and talk to the manager. I asked him (Chris) which was more important, helping the passenger, or talking to the manager. He told me that I had to listen to the manager. As the whole incidence was twisted to their devious design, hence I refused to sign the write-up and thereby, did not receive a copy.

03/08/09 On March 08, 2009, Mr. Mohammad Ali tried to give me Corrective Action Notice at the request of Mr. Latchmi, on the ground that I (Bibi) was not doing my regular job. I refused to accept and sign on the ground that these charges were based on lies.

05/??/09 During the first of second week of May, 2009 - I was to go on my regular break and Mr. Yeon (ATM) was to relieve me. Upon counting the cash, he found \$5.00 short. At this I had no choice but to count the cash, which I did three times and he was right. At this I told him (Yeon) that it is my fault, as I did not count the cash when he had handed me the cash at the beginning of the shift, and gave him \$5.00. I had hardly taken 20-steps

from the unit to the customs counter, Mr. Yeon shouted my name and asked me to come back. When I reached the unit where he was standing, he tells me that it was not \$5.00 it was \$10.00 short. I could not control myself and told him that you yourself had told me \$5.00 to be short and I counted three times and found \$5.00 short in your presence. How come it became \$10.00 short as against \$5.00?

- *Mr. Mohammed Ali (TM) wrote me up for this slip-up. Since, I signed for this written warning and I asked for a copy. I was told to call Ms. Schaneka and obtain the copy, which I did to no avail.*
- *I left message with Mr. Chris Baile, and he replied in my answering system saying that it is no more in file. This message is still in record.*

*09/15/09 On **September 15, 2009**, Mr. Chris Baile and Mr. Kurt Larson came to me in the Customs Area, telling me to go out side the ramp with the tugger and bring the carts into customs. I demanded a written letter to this effect in the presence of Mr. George who also agreed with me in telling both of them that it would be a breach of Port Authorities Safety Rules and Regulation.*

- *Few days later Mr. Romeo Itwaru told me that he has been instructed to tell you (Bibi) to go outside the ramp and bring carts inside customs. I asked him as to who has instructed you. He replied, "Mr. Chris and Mr. Erling." At this I asked him to give me (Bibi) in writing. At this he recanted saying it was not Mr. Chris, it was Mr. Erling who had instructed me to tell you so, and further added to touch base with Ms. Schaneka to obtain written instruction.*
- *I called her the next day and that day happened to be one of the Fridays under instruction from Mr. Romeo, and asked her for the written instruction for these additional duties. Instead of giving me the letter she read out from **Position Description of Ambassador**, "You must do any additional duties assigned by management." Please note that I have not received any such instruction in writing from this management till date, hence cannot comply due to its arbitrary nature and in direct violation of **Port Authority Safety Rules and Regulations**.*

12/06/09 - I was transferred from Terminal-1 to Terminal-4 on 12/06/200. While, I was still at Terminal-1, I had applied for 3-days PTB from December 12, 2009 to December 14, 2009, probably during the last week of November. My immediate manager Mr. Romeo Itwaru approved my leave at T-1 (Terminal-1). On my very first day at T-4 i.e. 12/06/09- I brought it to the attention of Mr. Latchmi that PTB has been granted and I will be away during the above-mentioned period. He passed the news to Mr. Osman Mayorga (TM) and comes back to me to say that he wants to speak with me.

I met him (Mr. Osman Mayorga) at T-4 Tunnel (office), and upon meeting, he told me that he understand from Mr. Latchmi that you (Bibi) have requested for 3-days leave @ T-1. Further added that you cannot get PTB, as you (Bibi) are working under me now. I replied, "What will happen to my reservation for the Ocean Park?" He replied, "I don't care." I said, "I will go to the office, to resolve this issue." He replied again, "You can go wherever you want to go, but you are not getting PTB." At this I told him that Mr. Romeo Itwaru has approved my leave, and it is in the record with the office. He said, "I don't care whether it is approved or not, and I will not tolerate you the way Romeo tolerated you (Bibi) at T-1. Furthermore, he added that I deny you the PTB.

NB: Please note that this was my first day's experience at the hand of Mr. Osman Mayorga (Terminal Manager), which I feel quite rude, abusive and insulting.

12/08/2009- This above incidence was reported to Ms. Schaneka, and her response was that you (Bibi) are supposed to do what the supervisor tells you to do.

03/13/2010 - On this day I reported to work at 1400hrs and was told by Mr. Osman that he wants to speak with me, and announced others present to leave except Mr. Derk. After everyone was gone he started saying, "Understand that you went to my boss Ms. Suzzane concerning your day-off to keep your doctor's appointment on 03/18/2010, and I not going to give you the day off. Further added that you (Bibi) will have to work at T-1 on Thursday i.e. 03/18/2010, don't say anything and go and do your job.

03/14/2010 - I went to the tunnel (office) at 1910hrs, and told Mr. Chris Roop Chand that I am availing my break in the presence of Osman, Derk and Ms. Nadira. He (Chris) responded with an okay. I came back to at 1935hrs after availing my break and was heading to the units inside customs, and on my way came across Mr. Osman complaining that I should not have left customs unattended. I replied that I took permission from Mr. Chris and my replacement Ms. Nadira should have covered customs in my absence. At this he told me to come to the tunnel, and he in the presence of Chris and Derk said that he is giving me a verbal write-up, and now you can go to work.

03/21/2010 - After reporting to work at 1400hrs, Mr. Osman told me to go back to the tunnel (Office). I followed his instruction only to be told in the presence of Mr. Chris and Derk, "You have been suspended for one day i.e. tomorrow (03/22/2010) for insubordination, as you Bibi raised you voice and refused to answer me.

04/12/2010 - At 2205pm, Mr. John approached me and asked me as to how much cash you (Bibi) have in the pouch? I replied, "One thousand." He said, "Give it to me, punch-out and go home." I said, "I have not finished my paper work and my shift is from 1400hrs to 2230hrs. He again said, "Punch-out and go home, as you are not going to be paid till 2230hrs, you will only be paid till 2200hrs. At this I said that I have not done my paper work, if you want me to leave, please give it to me in writing. He left the scene and came back at 2220hrs, and said that you did not leave yet. My response was, "I did not finish my paper-work yet. While I was doing my unit check he was on the phone with someone, and I overheard him say that she is still here. After finishing my work, I went to the tunnel to clock-out and I faced him again, and he asked me to spell my name, which I did. After clocking-out, I needed room for him to move aside, hence told him to excuse me. He knowing the situation moved aside and I went past him without touching him. As I was stepping down to approach the exit door, he asked me from behind, "What did you say?" I replied, "I said, "Excuse me." After few steps down the stairs towards the exit door, I wished him Good Night, and that was my last sentence on that day's shift.

04/15/2010 - I received a call from Mr. Osman at 0958hrs, asking me to report to the office before you (Bibi) go to work. I went to the office at 2:00pm, and found my self in the presence of Mr. Erling, Ms. Schenka, and Mr. Osman. Mr. Erling read out my termination letter with all the false and fabricated charges based on lies and deception.

All the above incidences are clear indication of discrimination, harassment and retaliation due to my signing for the union. Since we did not have Union in operation till my termination, and this company being an At Will Company, was finally able to succeed in their ultimate goal, and thus create a wave of fear amongst my fellow workers in Smarte Carte. My heart goes out to all my fellow workers who are constant victims of tyrannical and devious tactics of this management. I once again reiterate that all the charges and allegation against me were purely based on lies and without any merit.

Above is my true and honest statement without any guile. I fully understand its contents and I certify that it is true and correct to the best of my knowledge and belief.

Bibi Pageema Husain

Bibi Husain

128-46 150 Street,

Ozone Park, NY 11429

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Date: Thursday, April 22, 2010